IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

PIL WRIT PETITION NO.8 OF 2006

Janhit Manch & Others .. Petitioners.

V/s.

Union of India & Others .. Respondents.

Mr.B. Raiyani, petitioner-in-person.

Mr.B.A. Desai, Additional Solicitor General with Mr.Rajiv Chavan for respondent Nos.1 & 3.

Mr.K.R. Belosey, AGP for respondent No.2.

CORAM : R.M. LODHA &
NARESH H. PATIL, JJ.

DATED : 20TH JULY, 2006.

ORAL ORDER (Per R.M. Lodha, J.) :

By this writ petition, the petitioners have, inter alia, prayed that the Chief Information Commissioner and the Information Commissioners appointed under the Right to Information Act, 2005 (for short 'RTI Act') be declared as ad-hoc or temporary appointees and that an impartial sub-committee be formed to assist the selection committee under the RTI Act, 2005 for scrutinising the applications / nominations received for the post of Chief Information Commissioner and Information Commissioners and after shortlisting forward the names to the selection committee for personal interviews for the final selection for the said posts.

2. The Right to Information Act, 2005 was enacted by the Parliament to provide for setting up the practical regime of right to information for citizens to secure access to information under the control of public authorities in order to permit transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commissions and for matters connected therewith. As we are concerned with the appointment of Chief Information Commissioner, Central Information Commissioners, State Chief Information Commissioner and State Information Commissioner, it is not necessary to refer to various provisions of the RTI Act, 2005. Suffice it to refer to Sections 12 and 15 which provide for constitution of Central Information Commission and State Information Commission. The said provisions read thus :

> **"Section 12. - Constitution of Central Information Commission**
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> (1) The Central Government shall, by notification in the Official Gazette, constitute a body to be known as the Central Information Commission to exercise the powers conferred on, and to perform the functions assigned to, it under this Act.
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> (2) The Central Information Commission shall consist of -
>
> (a) the Chief Information Commissioner; and
>
> (b) such number of Central Information Commissioners, not exceeding ten, as may be deemed necessary.

(3) The Chief Information Commissioner and Information Commissioners shall be appointed by the President on the recommendation of a committee consisting of -

(i) the Prime Minister, who shall be the Chairperson of the committee;

(ii) the Leader of Opposition in the Lok Sabha; and

(iii) a Union Cabinet Minister to be nominated by the Prime Minister.

Explanation : For the purposes of removal of doubts, it is hereby declared that where the Loader of Opposition in the House of the People has not been recognised as such, the Leader of the single largest group in opposition of the Government in the House of the People shall be deemed to be the Leader of Opposition.

(4) The general superintendence, direction and management of the affairs of the Central Information Commission shall vest in the Chief Information Commissioner who shall be assisted by the Information Commissioners and may exercise all such powers and do all such acts and things which may be exercised or done by the Central Information Commission autonomously without being subjected to directions by any other authority under this Act.

(5) The Chief Information Commissioner and Information Commissioners shall be persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance.

(6) The Chief Information Commissioner or an Information Commissioner shall not be a Member of Parliament or Member of the Legislature of any State or Union territory, as the case may be, or hold any other office of profit or connected with any political party or carrying on any business or pursuing any profession.

(7) The headquarters of the Central Information Commission shall be at Delhi and Central Information Commission may, with the previous approval of the Central Government, establish offices at other places in India."

"Section 15.- Constitution of State Information Commission

(1) Every State Government shall, by notification in the Official Gazette, constitute a body to be known as the ..... (name of the State) Information Commission to exercise the powers conferred on, and to perform the functions assigned to, it under this Act.

(2) The State Information Commission shall consist of -

(a) the State Chief Information Commissioner, and

(b) such number of State Information Commissioners, not exceeding ten, as may be deemed necessary.

(3) The State Chief Information Commissioner and the State Information Commissioners shall be appointed by the Governor on the recommendation of a committee consisting of -

(i) the Chief Minister, who shall be the Chairperson of the committee;

(ii) the Leader of Opposition in the Legislative Assembly; and

(iii) a Cabinet Minister to be nominated by the Chief Minister.

Explanation : For the purposes of removal of doubts, it is hereby declared that where the Loeader of Opposition in the Legislative Assembly has not been recognised as such, the Loeader of the single largest group in oppoisition of the Government in the Legislative Assembly shall be deemed to be the Leader of Opposition.

(4) The general superintendence, direction and management of the affairs of the State Infomration Commission shall vest in the State Chief Information Commissioner who shall be assisted by the State Information Commissioners and may exercise all such powers and do all such acts and things which may be exercixed or done by the State Information Commission autonomously without being subjected to directions by any other authority under this Act.

> (5) The State Chief Information Commissioner and theState Information Commissioners shall be persons of eminencein public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance.
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> (6) The State Chief Information Commissioner or a State Information Commissioner shall not be a Mamber of Parliament or Member of the Legislature of any State or Union territory, as the case may be, or hold any other office or pfofit or connected with any political party or carrying on any business or pursuing any profession.
>
> (7) The headquarters of the State Information Commission shall be at such place in the State as the State Government may, by notification in the Official Gazette, specify and the State Information Commission may, with the previous approval of the State Government, establish offices at other places in the State."

3. It would be thus seen that the Central Information Commission consists of Chief Information Commissioner and such number of Central Information Commissioners as may be deemed necessary but the number shall not exceed ten. The Chief Information Commissioner and Central Information Commissioners are appointed by the President of India. The appointment is made by the President on the recommendations of the Committee consisting of (i) the Prime Minister, who is the Chairperson of the Committee; (ii) the Leader of Opposition in the Lok Sabha and (iii) Union Cabinet Minister who is nominated by the Prime Minister. The Act provides that the Chief Information Commissioner and the Information Commissioners shall be persons of

eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance.

4. With regard to the constitution of State Information Commission, Section 15 provides that the State Information Commission shall consist of the State Chief Information Commissioners and such number of State Information Commissioners as may be deemed necessary but not exceeding ten. The State Chief Information Commissioner and the State Information Commissioners are appointed by the Governor of the State. The appointment is made by the Governor on recommendations of the Committee consisting of (i) the Chief Minister, who is the Chairperson of the Committee; (ii) the Leader of Opposition in the Legislative Assembly and (iii) a Cabinet Minister who is nominated by the Chief Minister. Section 15 provides that the State Information Commissioners shall be persons of eminence in public life with wide knowledge and experience of law, science and technology, social services, management, journalism and mass media or administration and governance.

5. A close look at sections 12 and 15 would show that the Committee that makes recommendations to the President or the Governor (as the case may be) is the

High Power Committee. Before the said Committee makes recommendations to the President, the Committee takes into consideration that such person has eminence in public life with wide knowledge and experience in the subject/s as set out in the Act. That the recommendee meets the criterion can be assumed from the fact that the recommendation is made by such High Power Committee unless malafides are alleged and found to have some merit. The appointment of the Central Chief Commissioner and Information Commissioners and the State Chief Information Commissioner and the State Information Commissioners cannot be assailed on the ground that they are not in the opinion of the petitioners or the Court, the persons having eminence in public life with wide knowledge and experience.

6. The comparison, without knowing the intricacies of the system and set up, of the appointment of Secretaries in USA with the appointment of Chief Information Commissioner, Information Commissioners, State Chief Information Commissioner and State Information Commissioners under RTI Act, 2005, is odious. The writ petition is founded on assumptions, presumptions, preconceived notions and comparisons.

7. The prayer made by the petitioners that the Chief Information Commissioner and the Information

Commissioners appointed by the respondents under the RTI Act may be declared ad-hoc or temporary appointees is wholly misconceived. The prayer made by the petitioners to the effect that an impartial sub-committee be formed to assist the selection committee under the RTI Act, 2005 would mean enactment of law by the court which is not permissible. It is the Legislature's task to enact law. The Courts interpret the law and do not enact the law.

8. As the petitioner No.2 appears in person, we do not intend to say much on the quality of the writ petition which has been filed but suffice it to say that the writ petition is wholly misconceived and devoid of substance and does not deserve to be entertained.

Dismissed accordingly.

(R.M. LODHA, J.)

(NARESH H. PATIL, J.)